



CITY OF DANBURY
155 DEER HILL AVENUE
DANBURY, CONNECTICUT 06810

PLANNING COMMISSION
www.danbury-ct.gov

(203) 797-4525
(203) 797-4586 (FAX)

MINUTES
JUNE 2, 2021

The web-based meeting hosted on Zoom was called to order by Chairman Arnold Finaldi at 7:30 PM.

Present were Chairman Arnold Finaldi, Vice-Chairman Joel Urice, Helen Hoffstaetter, Bob Chiochio, Perry Salvagne, and Alternative Kevin Haas. Also present were Deputy Planning Director Jennifer Emminger and Planning Director Sharon Calitro.

Absent was Alternate Gary Renz.

Mrs. Hoffstaetter made a motion to accept the May 19, 2021 minutes. Mr. Salvagne seconded the motion and it was passed by voice vote with four ayes (from Mr. Chiochio, Mrs. Hoffstaetter, Mr. Salvagne and Mr. Urice. Chairman Finaldi abstained from the vote as he was not present at the May 19th meeting.

CONTINUATIONS OF PUBLIC HEARINGS:

Newtown Road LLC/Maria & Manuel Andre, Manuel Neves Gouveia Marques, & Antonio Mendes Gouveia Marques – Application for Special Exception/Site Plan Approval for Child Day Care Center in the CG-20/RA-8 Zone – 36 Newtown Road, 40 & 42 Newtown Road, Whitney Avenue (K13188, K13190 & K12255, & K12254) – SE 780. **THIS APPLICATION IS TABLED - THERE WILL BE NO ACTION TAKEN OR DISCUSSION ON IT.**

Mr. Urice made a motion to table and continue this hearing. Mrs. Hoffstaetter seconded the motion and it was passed unanimously by voice vote with five ayes (from Mr. Chiochio, Mrs. Hoffstaetter, Mr. Salvagne, Mr. Urice, and Chairman Finaldi).

Nejame Plaza LLC – Application for Special Exception/Revised Site Plan Approval to permit Storage of Concrete Aggregates or Manufacture of Concrete & Concrete Products, Storage of Bituminous Product, Storage or Sale of Building Materials, & Storage of Construction Equipment (Nejame Pool Industrial Site) in the IG-80 Zone - 44 Payne Road (N12004) - SE #776.

Chairman Finaldi recused himself and turned the Chair over to Vice-Chairman Urice. Vice-Chairman Urice asked Mr. Haas to take Chairman Finaldi's place for this matter. Mr. Haas verified that he has watched both the April 7, 2021 and the May 19, 2021 meetings and reviewed all of the required documents for this file.

Attorney Ward Mazzucco spoke in favor of this application. He said with him is the project engineer Ralph Gallagher and the applicant, Tom Nejame. Attorney Mazzucco said they had received the final staff report from Mrs. Emminger and they will need time to address all of the comments, so he had already submitted an extension letter to Mrs. Emminger. He said they had ended the last public hearing with questions so he has addressed some of them by modifying his PowerPoint presentation and revising the operating plan. Some of the questions were regarding the screening of the site, the possibility of fencing, where they would store & repair the construction equipment, concrete vs. concrete aggregate, what materials would be stored inside versus outside, hours of operation, and what specific work would be done inside the building.

Mr. Chiochio said the final staff report points out some inconsistencies between what has been said and what is on the site plan. He said he was out there today and he thinks the screening is reasonable as it exists. He added that he wants to be sure all of the inconsistencies are addressed. Mr. Urice then said the repair of vehicles should be located inside of the building. Attorney Mazzucco said the purpose of the larger building was to allow work to be done inside of the building, but some of the activities are messy and they need to be done outdoors. He added that any work done outdoors would be located behind the building and not visible from the road. Mrs. Emminger then said the current plan differs from the plan that was originally submitted, the fence that was supposed to screen the spaces designated as construction equipment spaces has disappeared. Mr. Gallagher said the fence was removed so there would be room to drive around the building. He added that he was not aware of a requirement for screening inside of the site. Mrs. Emminger then said it is in the staff report that outdoor storage of building materials needs to be screened from both adjacent properties as well as the roadway. Attorney Mazzucco said the photos show the screening all over the place and a fence would impair the circulation around the building and also limit access to the bins. The screening/fencing issue was debated by all until Mr. Nejame asked Mr. Gallagher if he could put an automatic fence across the front of the site. Mrs. Emminger expressed concern that this would affect the site distance and people pulling out on Payne Road. Mr. Nejame asked Mr. Gallagher to indicate the fence on the plans and to remove the island as requested by the Construction Services department. Attorney Mazzucco said they are going for full transparency about the scope of the activities that take place on this site. Mrs. Emminger said the plans need to be revised to be consistent with the operations plan as well as the testimony that has been presented. She said the rear storage cannot bleed into the rear access area and the storage area should be orderly not haphazard. The storage area is supposed to be incidental to the 8,000 sq.ft. building. Mr. Urice said they need to work out what operations will be done inside of the building versus outside of the building. He added that they need to have a plan and abide by it. He said he understands

that there are rare situations that occur but they need to be consistent and abide by the plan. Mr. Nejame said when asked what is done on this site, they went through everything in detail; there are some things that they do all of the time and other things that are only done occasionally. He said they tried very hard to be clear about what they do on the site and he wants to continue to do that.

Mr. Chiochio made a motion to continue this hearing. Mr. Salvagne seconded the motion and it was passed unanimously by voice vote with five ayes (from Mr. Chiochio, Mrs. Hoffstaetter, Mr. Salvagne, Mr. Haas, and Vice-Chairman Urice).

At 8:22 PM, Chairman Finaldi returned to the meeting and Vice-Chairman Urice returned the Chair to him.

Real Time Capital Properties LLC – Application for Special Exception/Revised Site Plan for expansion of existing self-storage facility (“Safe & Sound Storage”) in the IL-40 Zone – 18 Great Pasture Rd. (L15008-009) – SE #769.

Michael Mazzucco PE spoke in favor of this application. He said the hearing had been continued and tabled because the applicant still had assorted vehicles and materials stored in the rear accessway, which is required to be completely clear. Mrs. Emminger asked that the note on the site plan be modified to prohibit storage of anything in this accessway. Mr. Chiochio said he visited the site today at 3 PM and there was nothing in the accessway. Mr. Mazzucco then showed the Commission photos of the site taken today showing that there was nothing in the accessway. He said that was the only outstanding issue and noted that had also received the final letter from the Engineering department.

Chairman Finaldi asked if there was anyone to speak in opposition to this application and there was no one.

Mrs. Emminger said that all of the City department’s comments have been addressed, so there is nothing outstanding.

Mr. Urice made a motion to close the public hearing. Mrs. Hoffstaetter seconded the motion and it was passed unanimously by voice vote with five ayes (from Mr. Chiochio, Mrs. Hoffstaetter, Mr. Salvagne, Mr. Urice, and Chairman Finaldi).

Mr. Urice made a motion to move this item to Old Business for Discussion and Possible Action. Mrs. Hoffstaetter seconded the motion and it was passed unanimously by voice vote with five ayes (from Mr. Chiochio, Mrs. Hoffstaetter, Mr. Salvagne, Mr. Urice, and Chairman Finaldi).

OLD BUSINESS FOR DISCUSSION AND POSSIBLE ACTION:

Real Time Capital Properties LLC – Application for Special Exception/Revised Site Plan for expansion of existing self-storage facility (“Safe & Sound Storage”) in the IL-40 Zone – 18 Great Pasture Rd. (L15008-009) – SE #769.

Chairman Finaldi said they had moved this here so the Commission could give Mrs. Emminger guidance to prepare a draft resolution for the decision. Mr. Urice said he drove by the site and it looks like they have done what they were supposed to so he has no problem with approving this. Mrs. Hoffstaetter and Mr. Salvagne said they agreed with what was said by Mr. Urice. Chairman Finaldi said this reminded him about a different site that had similar issues and after they approved the application, the site went back to being a mess. He added that they will take this applicant at his word that the accessway is cleared out for good because they don’t want to see it cluttered up again. Mr. Urice then suggested that the resolution include a condition that this accessway remain free and clear of everything.

REFERRAL:

8-3a Referral - Petition of D & B Wellness to Amend Sections 5.A.5.f.(2), 5.B.3.b., and 5.B.5.f.(1) of the Zoning Regulations. (Delete Prohibition on Drive-Thru Window for Medical Marijuana Dispensary). Zoning Commission public hearing scheduled for June 8, 2021.

Mrs. Calitro reviewed her staff report dated May 27, 2021. She said last year’s amendment to allow medical marijuana dispensaries in CA-80 and CG-20 included a prohibition on its sale through a drive-thru window. It also prohibited the sale of recreational marijuana as only medical marijuana is legal in Connecticut. The CA-80 zone specifically prohibits the dispensing of food, beverages, or similar products through a drive thru window. Drive-thru uses are also prohibited for medical marijuana dispensaries within specific portions of the CG-20 zone. Many properties located within these two zones are located on arterial or collector streets, so adding the drive-thru use specifically for dispensaries could impact traffic safety. Mrs. Calitro said that based on compromised patient mobility, it might seem like a good idea to dispense the medical marijuana through a drive-thru window, but there are issues and also an alternative. She continued saying since the State is currently considering approving adult use recreational marijuana, this amendment has the potential to allow dispensaries to also sell recreational marijuana and associated products also through the drive-thru window. This would clearly undermine the existing prohibition on what can be dispensed through a drive-thru window. And it could result in traffic congestion and safety issues especially along Mill Plain Road where approval has already been granted for the dispensary to relocate to from their existing location in Bethel. She said the State Department of Consumer Protection has said although the delivery of medical marijuana via a drive-thru window has been discussed, they were not aware of any dispensaries that had them. Also additional security and other measures would likely be required by the State for any

facility that wants to have a drive-thru window. She noted that during the COVID-19 pandemic, the State allowed dispensaries to utilize curbside pick-up and will continue to allow this service. She added that makes curbside pick-up a reasonable and practical alternative to this amendment. She said with respect to compliance with the Plan of Conservation & Development (POCD), since this is an amendment, it is not necessary to find it consistent with the Land Development Plan Map. She added that this amendment may seem consistent with the Land Development Plan Section regarding changing regulations to address changing development practices, but it comes with the risk of reducing the protections the City has long endeavored to maintain regarding restrictions on drive-through uses, particularly in the CA-80 Zone. She pointed out that parking spaces dedicated to curbside delivery remains a feasible alternative to this amendment while maintaining the integrity of the Zoning Regulations. She added that deleting the prohibition for dispensaries may lead to applications for other uses seeking the delivery of food, beverages, or similar products out drive thru windows. She said in order to recommend approval of this petition, the Commission must find that the amendments are (1) consistent with the POCD, (2) meet the purpose and intent of the CA-80 and CG-20 Zones, and (3) will not negatively impact the health, safety and welfare of the general public. In closing, she said while Staff recognizes there is a need for delivery of medical marijuana products to patients with compromised mobility, these considerations as well as the broader implications of the pending legislation, and the existence of a feasible alternative, the staff report is intended to note the concerns relative to the proposed deletion of the prohibition for this use.

Mr. Salvagne said he understands the reluctance to change this prohibition because of the traffic but questioned if there is a difference between this use and a bank. Mr. Urice said he appreciates that staff recognizes that this is still a Schedule 1 drug and therefore illegal. He added that the argument about not being physically able to get inside the building works for the purchase of a hamburger also. He added that he does not think the pending legislation on recreational marijuana should be a consideration for this petition. He said drive-thru's are prohibited for specific reasons which have been documented in the court system. He said he does not think medical marijuana should be treated any differently than any of the other products that are distributed through a drive-thru window. Mrs. Hoffstaetter said Mr. Urice made a good point and she agrees with Mrs. Calitro that once the door is opened, they will be dealing with the fast food prohibition issue. She said they turned down a market with a drive-thru proposed for property across the street (*from the location approved for this dispensary*) and this is no different. She said the court found that their denial was the correct decision for this area and they need to remember why they made that decision. Mr. Salvagne asked how this differs from dispensing medical products through a drive-thru window and then questioned what exactly this would open the City up to. Mrs. Hoffstaetter asked if we allow drive-thru windows for package stores. Mrs. Calitro said we do not and the City has spent years protecting this specific zone from fast food uses and the resulting traffic congestion and safety issues that they bring. She said when medical marijuana was legalized in Connecticut, at first we had a moratorium on so we could study the issue, and then we had a prohibition on it. Last year, we allowed the use as a special exception but with the

specific prohibition of no drive-thru window. Mr. Salvagne suggested we could put conditions on it. Mrs. Calitro pointed out that conditions can be very difficult to enforce, so they do not always work. Chairman Finaldi said this is an enormously complicated issue with many factors to consider. He added that the pending legislation regarding the legalization of recreational marijuana seems to complicate the issue even more. He said drive-thru windows can be tricky and need to be given additional consideration, especially after the courts found that their denial was the correct decision. He then reminded the Commission that they are not making the decision, this is just a recommendation,. Mr. Urice said it doesn't matter what the product being dispensed is, the issue is to continue to protect the zone from anything that could be detrimental to the area and the citizens of Danbury. Mr. Urice then made a motion to give this a negative recommendation for the following reasons:

- 1) This amendment is inconsistent with the Plan of Conservation & Development (POCD) specifically the Land Development Plan Section regarding coordinating land use decisions with transportation systems to ensure roads and highways can accommodate new development without significant declines in traffic safety or efficiency.
- 2) Approval of this would undermine the existing prohibition on drive-thru windows and could impact the compatibility of land uses and result in traffic congestion and safety impacts along arterial corridors, especially Mill Plain Road.
- 3) The amendment has the potential to have negative impact on the health, safety, & welfare of the general public, and could reduce the protections the City has long endeavored to maintain relative to restrictions on drive-through uses, particularly in the CA-80 Zone.

Mr. Chiocchio seconded the motion and it was passed by roll call vote with four ayes (from Mr. Chiocchio, Mrs. Hoffstaetter, Mr. Urice, and Chairman Finaldi) and one nay (from Mr. Salvagne).

At 9:20 PM with no further business to discuss, Mrs. Hoffstaetter made a motion to adjourn. Mr. Urice seconded the motion and it was passed unanimously by voice vote with five ayes (from Mr. Chiocchio, Mrs. Hoffstaetter, Mr. Salvagne, Mr. Urice, & Chairman Finaldi).

Respectfully submitted,

JoAnne V. Read
Planning Assistant